

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 588 OF 2007
IN
SECOND APPEAL NO. 463 OF 1992

Shri Ganpati Kesu Nalawade
since deceased through his LRs

1. Smt. Hirabai Ganpati Desai
and ors.

..Applicants

Vs.

1. Shri Keshav Sitaram Kulkarni
and ors.

..Respondents

Mr. V.M. Thorat for applicants.
Respondent No.1 in person present.

CORAM: B.H. MARLAPALLE, J.

Date : April 30, 2007.

P.C.:

1. Heard Mr. Thorat the learned counsel for the applicants. This is an application for restoration of Second Appeal No. 463 of 1992 which was dismissed in default and as per the office note the application is beyond time by 118 days.

2. From amongst the respondents only respondent

no.1 - Keshav Sitaram Kulkarni is present and he states that the respondent no.2- Vilas, respondent no.4 - Smt. Surgabai and respondent no.6 - Anant are no more. He further states that respondent no.3 - Narayan and respondent no.5 - Vasudha could not remain present today because of their old age. He has opposed this application pointing out that the applicants are taking undue advantage of the sympathy shown by this court by restoring the second appeal on the earlier occasions. He further states that the trial court had passed the decree way back on 14/9/1987 and the defendant was directed to execute the sale deed in favour of the plaintiffs as per the agreement dated 13/7/1951. As per him this agreement agreed to be executed about 55 years back remains to be still complied with as per the directions of the trial court.

3. The farad of the second appeal indicates that it was dismissed for the first time as abated on 5/9/2001 on account of the original defendant-appellant having been dead. It came to be restored on 27/8/2004 and it was directed to be listed

for final hearing on 13/9/2004. However, the appeal again came to be dismissed on 19/10/2006 as per the conditional order.

4. The negligence on the part of the learned Advocate or his staff need not come in the way of the second appeal being restored and decided on merits and more so when the respondents have become senior citizens by now. The respondents also claimed that they have no means to engage an Advocate when their existing Advocate has shown his inability to appear any more.

5. By way of last chance a sympathetic view is being taken to restore the second appeal for being decided on merits but by awarding exemplary costs.

6. Hence, the application is allowed in terms of prayer clauses (a) and (b) subject to the learned Advocate for the applicants depositing an amount of Rs.10,000/- in the court of the learned Civil Judge, J.D. at Karad within three weeks from today. The respondents are at liberty to withdraw the same, if

they submit an application within one week from the said amount, so deposited.

7. Second Appeal No. 463 of 1992 is directed to be listed for final hearing in the week commencing from 11/6/2007 subject to the costs being deposited with the trial court and the proof thereof is shown to the Deputy Registrar (Judicial) before 30/5/2007.

(B.H. Marlapalle, J.)